IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL CASE No. 8 of 2002
In
COMPANY PETITION No. 152 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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O.L. OF MAYO HOSPITAL LTD. - Complainant(s)
Versus
DWIPA YOGESH MANKODI & 10 - Accused

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Appearance :

OFFICIAL LIQUIDATOR for Complainant(s) : 1,MS AMEE YAJNIK for Complainant(s) : 1,
MR PAVAN S GODIAWALA for Accused : 1 - 2.
DELETED for Accused : 3, 5, 8,
NOTICE NOT RECD BACK for Accused : 4, 11,
NOTICE SERVED for Accused : 6,
NOTICE UNSERVED for Accused : 7,9 - 10.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 29/01/2007

ORAL JUDGMENT

1. This criminal complaint has been filed by the Official Liquidator of Mayo Hospital Limited (in liquidation) under Section 454 of the Companies Act; 1956 to take cognizance of the default committed under Section 454 (5) of the Companies Act; 1956 and to issue process against the accused Nos.1 to 9 and to try and punish them in accordance with the provisions of law.

2. It is the case on behalf of the Official Liquidator – complainant that vide order dated 16.2.1999 passed in Company Petition No. 152 of 1995, the Official Liquidator attached to this Court was appointed as a Provisional Liquidator of the applicant company with a direction to take charge of the assets of the company and to prepare inventory and valuation of the same. It is submitted that the accused Nos.1 to 11 were the Directors of the company in liquidation as on the relevant date of the appointment of the Official Liquidator as Provisional Liquidator i.e. 16.2.1999. It is submitted that as per the provision of Section 454 of the Act, the Ex-

Directors of the company were required and legally bound to file with the Official Liquidator as to Statement of Affairs of the aforesaid company within 21 days, however, the Ex-Directors – accused Nos.1 to 11 herein failed to submit the Statement of Affairs and therefore, notices were issued upon the accused Nos.1 to 11 on 13.2.2002 calling upon the Ex-Directors to submit / file the Statement of Affairs, however, as the Statement of Affairs were not failed, the present complaint came to be filed on 15.6.2002.

3. It appears from the record that the defective Statement of Affairs came to be filed by the accused Nos.1 and 2 on 23.2.2004, however, there were certain defects pointed out by the Official Liquidator and thereafter, the defects were removed and on going through the same, the Official Liquidator has submitted that now the complete Statement of Affairs as required under the law are filed. The learned counsel appearing for the Official Liquidator has submitted that

as there was a delay in filing the Statement of Affairs and there is a breach of Section 454(5) of the Act, it is requested to pass an appropriate order of punishment / penalty.

4. Shri Godiawala, learned advocate appearing for the accused Nos.1 and 2 has submitted that now the complete Statement of Affairs have been filed and as the relevant record was not available at the relevant time, there is a delay in filing the Statement of Affairs. It is submitted that considering the affidavit in reply on behalf of the accused Nos.1 and 2 and the cause shown for not submitting the Statement of Affairs within the stipulated time as required under Section 454 of the Act and considering the subsequent conduct on the part of the accused, it is requested not to pass any order of punishment and it is requested that an appropriate order of penalty may be passed as the accused Nos.1 and 2 are ladies and the main Managing Director has expired.

5. Heard the learned advocates appearing for the respective parties.

6. It is not in dispute that the Provisional Liquidator was appointed for the company in liquidation on 16.2.1999 and as per the provision of Section 454 of the Act the Statement of Affairs were required to be filed by the Ex-Directors within a period of 21 days. The Ex-Directors did not submit the Statement of Affairs within the stipulated time and therefore, the Official Liquidator – complainant herein served notices dated 13.2.2002 upon the Ex-Directors and called upon the Ex-Directors to submit the Statement of Affairs, however, the Statement of Affairs were not filed and defective Statement of Affairs came to be filed on 23.2.2004. Thereafter, the Official Liquidator raised certain quarry and pointed out the defects in the Statement of Affairs and thereafter now it appears that the Statement of Affairs in accordance with law has been filed by the accused, however, it is not disputed that

there is a delay in filing the Statement of Affairs. It is the case on behalf of the accused Nos.1 and 2 that one Shri Yogesh Mankodi – original accused No.5 was the Promoter and managing the affairs of the company who has died and thereafter the accused Nos.1 and 2 were required to submit the Statement of Affairs and the same has been filed. It is submitted that accused Nos.1 and 2 are the ladies who were not in active management of the company in liquidation. Now, considering the conduct on the part of the accused after filing of the complaint and considering the fact that the complete Statement of Affairs have been filed and the accused Nos.1 and 2 being ladies and considering the submission on behalf of the accused that instead of imposing punishment, an appropriate order of penalty be passed, according to this Court, this is not a case where an order of punishment is required to be passed meaning thereby, imposing punishment of imprisonment. Considering the facts and circumstances of the case and affidavit in reply

and the submissions made on behalf of the accused, as per the opinion of this Court, if the order of penalty is passed, it will meet the ends of justice and accordingly, by holding the accused, more particularly, accused Nos.1 and 2 guilty for breach of the Section 454 of the Companies Act; 1956, the penalty of Rs.25,000/- is imposed which the accused Nos.1 and 2 are directed to deposit with the Registry of this Court within a period of 4 weeks from today.

7. With these, the present criminal case is disposed of.

[M.R.Shah, J.]

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